

REMARKS

After entry of the foregoing amendments, claims 34 – 40, 42, 43, and 46-60 are pending in this application. Claims 1 – 33, 41, 44 and 45 have been canceled and Claims 48-60 have been added. Reconsideration of the application, as amended, is requested.

The Examiner rejected Claims 34-39 and 42-49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,327,570 to Stevens (“*Stevens*”) in view of “What Grocers Want in Electronic Marketing Programs” (“*What Grocers Want*”), POS News, v.7, n.13, 5/91. The Examiner also rejected Claims 34-39 and 42-49 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,024,288 to Gottlich et al. (“*Gottlich*”) in view of *What Grocers Want*. Finally, the Examiner rejected Claims 40-41 under 35 U.S.C. § 103(a) as being unpatentable over *Gottlich* or *Stevens* in view of *What Grocers Want*, and further in view of U.S. Patent No. 5,727,196, to Strauss, Jr. et al. (“*Strauss*”). As discussed in detail below, the amendment to independent Claim 34 renders these rejections moot. As is also discussed below, new independent Claim 49 is patentable over these references. As such, the pending claims are in condition for allowance.

The Independent Claims Are Allowable Over The Cited References

Independent Claim 34 has been amended to recite a computer program for analyzing consumer data, where the computer program is at least in part remote from said terminal device, and a collection center, in communication with the terminal device, where the collection center instructs the terminal device to extract all or part of the consumer data from the consumer data acquisition device. New independent claim 49 has similar language, including a computer program at least in part at and remote from the consumer data acquisition device, and a collection center, in communication with the terminal device, where the collection center instructs the terminal device to extract all or part of the consumer data from the consumer data acquisition device,

As illustrated and supported by the system shown in FIG. 1, and the corresponding discussion in the detailed description, the present invention utilizes a terminal device 112 for accessing a personal data acquisition device 110, where the terminal device 112 extracts data, such as purchasing data and personal preferences, from the data acquisition device 110. As

illustrated in FIG. 1, the terminal 112 may be part of the point of sale equipment 130 from which data is acquired. Significantly, the system of the present invention also includes a collection center 114 having therein a computer program operating on a computer 126. Because the computer program and collection center 114 serve as a central repository for tracking purchasing data and preferences from one or more terminals, the collection center 114 is illustrated as separate from the terminal 112. More specifically, the computer program at the collection center 114 provides instruction to the terminal on what data to extract from the data acquisition device, and the computer program also builds an inferred marketing database from the data received.

As noted above, the claims have been amended to recite that the computer program is at least partially remote from the terminal and that the collection center instructs the terminal device to extract all or part of the consumer data from the consumer data acquisition device. No such system is taught or suggested by the prior art references.

What Grocers Want discloses that grocers want a simple program for implementing frequent shopper programs, where customers can receive incentives, e.g., cash back, at point of sale devices. The Office Action relies on this reference for the proposition that retailers would like to control what information is collected from a consumer, and how that information is used to provide incentives (see page 1, 3rd paragraph).

It is clear that the systems described in *What Grocers Want* are limited to systems having local control of data. For instance, *What Grocers Want* describes that it is an advantage to track, using point of sale systems, local purchases made by consumers. This local control of data at the sale location permits individual retailers to customize frequent shopper programs as they deem appropriate. Systems in which data is remotely controlled are thus distinguishable from the teachings of *What Grocers Want* in which retailers demand control of information collected from customers, including the rules for collecting such information.

The benefit of the present invention is to permit the consumer acquisition device to include an analysis program and/or to allow the collection center to build an inferred marketing database while the data of the system is distributed throughout the system. As amended, the claims recite that the computer program performing the analysis is remote from, rather than executed at, the terminal. Further, the amended claims recite that the collection center instructs the terminal device to extract all or part of the consumer data from the consumer data acquisition device. Because the control of data extraction is at least in part remote from the terminal at the

point of sale, the amended claims are not taught or suggested by *What Grocers Want*. On the contrary to disclosing or suggesting the present invention, because *What Grocers Want* stresses the importance of local control, the reference teaches against the claimed invention.

Stevens, *Gottlich* and *Strauss* also fail to disclose a system as defined by the amended claims.

Stevens discloses a system including a personal data device that is worn by a consumer and which communicates with products and private store networks. The personal data device includes local processing means with an interactive display and wireless communications hardware. The system disclosed by *Stevens* can include a master or central node that is in communication with one or more databases (see col. 6, lines 61-67), where the master or central node can perform statistical analysis of consumer business data and product sales information to predict trends, target specific consumers, or provide feedback to participating businesses (see col. 8, lines 9-15). The system may also include a business network having in-store local communication units in communication with a customer's personal data device when the customer is near or in a store. The personal data device may communicate with the in-store units, which in turn serve information to the master node.

Although *Stevens* discloses that a master control node can communicate with the data device, for instance via a business or store unit, *Stevens* does not disclose or suggest that a remote collection center dictate what information the terminal extracts from the data device. On the contrary, in *Stevens* the master control node simply receives data pushed to it from the personal data device, directly or via an in-store network. This is in contrast to the amended claims, which recite that the collection center instructs the terminal device to extract all or part of the consumer data from the consumer data acquisition device. As described above, this permits the collection center to build and maintain an inferred marketing database. Because the collection of data is dictated in part by the collection center, the amended claims are not taught or suggested by *Stevens*.

Gottlich and *Strauss* likewise fail to teach or suggest the invention as defined by the amended claims. *Gottlich* discloses a smart card device held by an consumer, where the smart card maintains historical transaction information. The card may be inserted into a kiosk or terminal that will read the information on the card and offer incentives and coupons. *Gottlich* also indicates that the card may include communication means to communicate with an outside

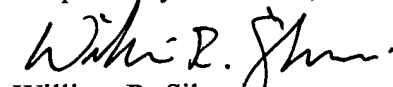
source to transfer and/or receive data such as a user's personal or purchasing history, promotional offers, or updates to software (col. 8, lines 46-57). *Strauss* discloses a database management system including a computer having a memory and a processor, and a database for storing information in the memory as field values in a record. The system also includes an indexing component for referencing a plurality of records by a value of the field(s), an input device for selecting desired records by entering a range of values ("key range") corresponding to the field(s), and a component for accessing the desired records as an order set, where only records having a value within said range are included within the set. As with *What Grocers Want* and *Stevens*, neither *Gottlich* or *Strauss* disclose a collection center, in communication with the terminal device, where the collection center instructs the terminal device to extract all or part of the consumer data from the consumer data acquisition device, as recited by independent claims 34 and 49.

Applicant respectfully asserts that the independent claims are allowable over the prior art. Furthermore, because the independent claims are allowable, the dependent claims are allowable as a matter of law.

Conclusion

The foregoing is submitted as a full and complete response to the Office Action mailed June 20, 2003. The Applicant requests that all pending claims be allowed because, as shown above, they are patentable over the art of record. If there are any issues that can be resolved by a telephone conference or an Examiner's Amendment, the examiner is invited to call the undersigned attorney at (404) 853-8214.

Respectfully submitted,



William R. Silver
Attorney for Applicant
Reg. No. 45,383

SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309
(404) 853-8000
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